

**IN THE COURT OF APPEAL OF NEW ZEALAND**

**I TE KŌTI PĪRA O AOTEAROA**

**CA182/2025  
[2025] NZCA 540**

BETWEEN	PEKAROA TAUIRA Appellant
AND	THE KING Respondent

Hearing:	29 September 2025
Court:	Mallon, Whata and Venning JJ
Counsel:	S P Dickson for Appellant B So for Respondent
Judgment:	14 October 2025 at 11 am

---

**JUDGMENT OF THE COURT**

---

- A The appeal is allowed.**
- B The conviction and sentence are set aside.**
- C We make an order discharging the appellant without conviction under s 106 of the Sentencing Act 2002.**
- 

**REASONS**

Mallon and Whata JJ	Para No
Venning J	[1] [36]

## **MALLON AND WHATA JJ**

(Given by Mallon J)

### **Introduction**

[1] Pekaroa Tauira pleaded guilty to receiving stolen property. Her application for a discharge without conviction was declined and she was sentenced to six months' supervision.<sup>1</sup> She appeals the decision declining to discharge her without conviction.

[2] Ms Tauira signed the notice of appeal on 13 June 2025. Her counsel, Ms Dickson, advises that she has since lost contact with Ms Tauira. Ms Tauira's phone number is not working and she does not appear to be living at her last known address. However, as Ms Dickson's most recent instructions were to proceed with the appeal, she has proceeded to advance her appeal. We accept it is appropriate that she do so.

### **Background**

[3] Ms Tauira was initially charged with stealing money valued at \$8,480.<sup>2</sup> She entered a not guilty plea and elected trial by jury. A little over three years later Ms Tauira entered a guilty plea to an amended charge of receiving stolen property (in the amount of \$6,482), knowing it to have been stolen or being reckless as to whether it was stolen.<sup>3</sup>

[4] The application for a discharge without conviction proceeded on the basis of an agreed statement of facts. As set out in that agreed statement, on 10 and 11 May 2021 an unknown male called the victim, who is 82 years old, claiming to be a bank technician and convincing her to install a remote access application on her computer. This enabled the computer to be manipulated and a series of five withdrawals from the victim's bank account totalling \$32,980 were made. One of these withdrawals was of \$8,480 which was received into the bank of account of

---

<sup>1</sup> *R v Schwenke* [2025] NZDC 6421 [sentencing notes].

<sup>2</sup> Crimes Act 1961, ss 219 and 223(b).

<sup>3</sup> Sections 246–247.

Ms Tauira on 10 May 2021 at 1.54 pm.<sup>4</sup> At 4.13 pm Ms Tauira received \$6,482 of this sum when she visited a bank branch and withdrew it over the counter.

[5] With the help of the victim's son, the victim reported the withdrawals to her bank and to the police. The victim, who has lived alone since her husband died, says the incident has affected her confidence and general ability to cope with life. She advises that her bank has fully reimbursed her.

[6] The Department of Corrections | Ara Poutama Aotearoa pre-sentence report advised that Ms Tauira was 45 years old and had no previous convictions. She has five children, including a four-year-old son with special needs who lives with her. She grew up with strong family connections with her mother and siblings. She described herself as having a good religious upbringing and that she continued to practice her faith. She left school to look after her grandparents. Ms Tauira told the report writer that her niece had asked to use her bank account so that she could receive money from her father for her birthday because she did not have a bank account at the time. Ms Tauira trusted her niece. Ms Tauira told the report writer that her bank card had gone missing and so she had to go into the bank to withdraw the money for her niece. She reported her missing bank card and was given a new card. She said the charge had weighed heavily on her. The report writer assessed Ms Tauira's risk of reoffending as low.

[7] In support of her application for a discharge without conviction, Ms Tauira filed an affidavit. In this affidavit, she gave an essentially similar explanation. She said her niece had come to her house on 9 May 2021, asking if she could use Ms Tauira's bank account so that she could get some money from her father. The niece was homeless at the time. Ms Tauira believed that her niece did not have identification or a bank account. The next day the niece came to Ms Tauira's house and told her the money was in her account. Ms Tauira checked on her phone banking and saw it was there. She went to the bank and withdrew the money. Her niece waited outside for her. Ms Tauira walked out of the bank with the money and handed it to her niece.

---

<sup>4</sup> It is not suggested that Ms Tauira was connected in any way to the other four withdrawals received into the bank accounts of others.

[8] Ms Tauira went on to say that she should have thought more about where her niece was getting the money from. Ms Tauira knew her niece's father was dead, but thought the money could have been coming from her niece's stepfather. Ms Tauira was, though, suspicious about the money and was very sorry for her part in it. She had no idea about the victim and how the money had been obtained from her. She was glad to hear the victim had been reimbursed by the bank.

[9] Ms Tauira's affidavit also provided further information about her personal circumstances. She said she did not have much to do with her father as a child because he was gang-affiliated. Her mother was very sick and had a heart attack shortly after Ms Tauira told her about the charge she was facing. Her siblings blamed her for their mother's heart attack and her family is extremely ashamed about it.<sup>5</sup> Ms Tauira has two adult children and two teenagers (who lived with Ms Tauira's mother), along with her four-year-old son. Her four-year-old son was struggling and she had been advised that he might have autism. It had been very stressful to manage him. She had "really just been a mum and done temporary work" and her "last job was at Hansells before [her] son was born". She was not very good at reading or writing and finished school at year 11.

[10] She also said:

14 I have been in discussions with WINZ about getting my full licence. I'm not exactly sure what I want to do in the future, but I am thinking about becoming a bus driver or a truck driver.

15 I would like to get my truck licence or bus licence. I might also be a delivery driver.

...

16 I am concerned about what criminal convictions would do for my future and my ability to provide for my son and any future career opportunities.

17 I am also concerned about the shame I will feel if I am convicted of these charges. My family are already very angry at me and I am concerned about how much worse it will get if they find out I am convicted.

---

<sup>5</sup> Ms Tauira advised the pre-sentence report writer that her mother died in the last week of January 2025 (a week after her affidavit was signed).

[11] Ms Dickson advised that it was Ms Tauira’s intention to find a job when her son goes to school.

### **Discharge without conviction jurisdiction**

[12] A court may grant a discharge without conviction when the direct and indirect consequences of a conviction would be out of all proportion to the gravity of the offence.<sup>6</sup> As set out in *Z (CA447/2012) v The Queen*, the gravity of the offence includes all factors relating to the offending and the offender.<sup>7</sup> On appeal, a court must allow the appeal if it is satisfied a miscarriage of justice has occurred by virtue of a material error in entering the conviction or in applying the principles for discharging an offender without conviction.<sup>8</sup>

### **District Court decision**

[13] In the District Court, Judge Gibson described the offending as serious and involving “no small sum” in so far as the complainant was concerned, but “as a receiving offence itself ... at the low to the bottom end for this type of offence”.<sup>9</sup> The fact Ms Tauira was a first offender and the offending was “a single opportunistic act” needed to be weighed, as did her explanation for the offending.<sup>10</sup> However, this was tempered by the fact that the guilty plea came very late, being nearly three years after the first charge was laid.<sup>11</sup>

[14] The Judge considered the only consequence Ms Tauira could point to was the effect of a conviction on her prospective employment. However, as she had no job offer, the Judge viewed this prospect as “aspirational rather than pending”.<sup>12</sup> The Judge also noted that Ms Tauira had not worked very often as a result of having the

---

<sup>6</sup> Sentencing Act 2002, ss 106 and 107.

<sup>7</sup> *Z (CA447/2012) v The Queen* [2012] NZCA 599, [2013] NZAR 142 at [27]–[28].

<sup>8</sup> *Jackson v R* [2016] NZCA 627, (2016) 28 CRNZ 144 at [12]; and Criminal Procedure Act 2011, s 232. Determining whether the consequences of a conviction are out of all proportion to the gravity of the offence is an evaluative exercise, not the exercise of a discretion. Whether a discharge without conviction should then be granted is discretionary: *Doyle v R* [2022] NZCA 307 at [15], citing *R v Hughes* [2008] NZCA 546, [2009] 3 NZLR 222 at [11].

<sup>9</sup> Sentencing notes, above n 1, at [6].

<sup>10</sup> At [7].

<sup>11</sup> At [7].

<sup>12</sup> At [9].

obligation of looking after children.<sup>13</sup> Relying on *Walker v Police* where the risk to employment prospects was said to be a “generic, if not inevitable, consequence of a conviction, particularly one for dishonesty”,<sup>14</sup> the Judge noted it was accepted by Ms Dickson that it was a generic consequence in this case.<sup>15</sup>

[15] While accepting that Ms Taurira would not have known who the victim was, the Judge concluded that that dishonesty, particularly against the elderly, was a serious matter and it could not be said that the consequences of entering a conviction would be out of all proportion to the gravity of the offending.<sup>16</sup>

### **Assessment**

[16] On appeal Ms Dickson submits the Judge erred in his assessment of the consequences of a conviction and in finding that the direct and indirect consequences were out of all proportion to the gravity of the offending. Ms Dickson says Ms Taurira is a vulnerable and disadvantaged person with limited reading and writing skills, and who has been homeless at times. She says it is to Ms Taurira’s credit that she had not committed any criminal offending up until this point.

[17] Ms Dickson submits that employers may reject an application from Ms Taurira for work because she has a conviction for dishonesty offending without considering the gravity of the offending. She also says the conviction may affect Ms Taurira’s confidence in applying for work, and the stigma and shame she feels should be taken into account as well. She says generic consequences may give rise to consequences that are out of all proportion to the gravity of the offending where that gravity is low, as it was in this case.

[18] Ms Dickson refers to this Court’s decision in *R v Taulapapa*.<sup>17</sup> In that case the Court summarised points about the consequences of conviction for young people emerging from a survey of some of the cases, as relevant here, as follows:<sup>18</sup>

---

<sup>13</sup> At [9].

<sup>14</sup> *Walker v Police* [2016] NZHC 1450 at [23].

<sup>15</sup> Sentencing notes, above n 1, at [11].

<sup>16</sup> At [12].

<sup>17</sup> *R v Taulapapa* [2018] NZCA 414.

<sup>18</sup> At [42] (footnotes omitted and emphasis added).

- (a) Conviction carries a social stigma which the law sustains by recording and publishing convictions. It may affect a person's career, but that consequence must normally yield to the employer's right to know. This principle extends to independent bodies charged with assessing the character or suitability for a particular career. It applies to all offenders for whom convictions are recorded, including the young.
- (b) The consequence may be severe if employers are unwilling to look behind the conviction to consider the person's merits and that reaction is unfair to the offender in the sense that the conviction itself ought not exclude them from the career or job concerned. Such risk may arise where the conviction speaks to character or records a serious offence but does not fairly reflect the offender's character or culpability. *Theft may be an example of an offence that may lead employers to reject an applicant without further inquiry.*
- ...
- (d) The court may assume that applicants with convictions are likely to be excluded without inquiry where employers must filter many applications before arriving at a shortlist for interview; *this may apply particularly to unskilled or semi-skilled work.*
- ...
- (f) ... the consequences may also be severe where the offender points only to general consequences for a young person looking for any employment suited to his or her talents. That may be so where, as noted above, employers are unwilling to consider the young person on their merits.

[19] Ms Dickson makes the point that, although Ms Tauira is not a young person, it will be difficult for her to obtain work given her background. She says a prospective employer is unlikely to look behind her conviction for dishonesty offending to understand its circumstances and low-level nature.

[20] Ms Dickson also notes that in *Walker v Police* the Judge had said that there might have been more scope for a discharge without conviction "if [the] dishonesty offending had been less serious, resulting perhaps from a single opportunistic or impulsive act".<sup>19</sup> She says this is the kind of dishonesty offending here and the sentencing Judge did not clearly explain why generic consequences were not sufficient here to be out of all proportion to the low gravity of the offending.

---

<sup>19</sup> *Walker v Police*, above n 14, at [27].

[21] We consider the appeal should be allowed. Although the dishonesty offending in relation to an elderly victim was serious, we agree that Ms Tauira's role in that offending was low, if Ms Tauria's explanation of the offence is accepted.

[22] The Judge described Ms Tauira's explanation as "not necessarily consistent with" her guilty plea.<sup>20</sup> We infer this relates to whether Ms Tauira knew or was reckless as to whether the money was stolen. We note that Ms Tauira did accept that she should have thought more about where her niece was getting the money from and that she was "suspicious about the amount of money that came through". While that is not strictly consistent with her guilty plea, it is in broad terms close to accepting that she was reckless as to whether (that is, she recognised the real possibility that) the money was stolen.

[23] It is unclear if the Judge accepted her explanation that she had accepted the money into her account and withdrawn the money at her niece's request, and had given the money straight to her. It is unclear if the Crown directly challenged this explanation in the District Court but the Crown did not seek to do so on appeal. We also note that the Crown was prepared to proceed on the basis of an amended summary of facts. This amendment deleted the words "the benefit of" from a sentence that had read: "At 4.13 pm, Ms Tauira received the benefit of \$6,482 of the above amount, by making an ASB customer service counter withdrawal". We infer, therefore, that the Crown accepted for the purposes of sentencing that Ms Tauira did not receive the benefit of that money — that is, it accepted the reasonable possibility that the money was handed over to another person.

[24] If Ms Tauira handed over the money to another person (her niece or someone else), that makes her explanation that she only received the money into her account at that person's request also reasonably possible. In the absence of a challenge to this explanation, the gravity of the offending was low.

[25] Added to this, is that Ms Tauira has no previous convictions at the age of 45 years. This mitigating factor is entitled to some weight. Further, Ms Tauira was

---

<sup>20</sup> Sentencing notes, above n 1, at [7].



remorseful and her risk of reoffending was assessed by the pre-sentence report writer as low.

[26] We accept the Judge was right to make the point that Ms Tauira took some considerable time to enter a guilty plea. However, Ms Tauira was originally charged with theft. It is unclear when the charge was amended to receiving, but it does appear that this was first amended to a charge of receiving the full \$8,480 that appeared in her account. An earlier summary of facts stated that she had received this sum and on the same day \$2,000 was withdrawn from Ms Tauira's bank account via an ATM (the maximum available limit for a cash withdrawal). The "corrected" agreed summary of facts is dated 26 February 2025, and was the basis for Ms Tauira's guilty plea on 21 January 2025.<sup>21</sup> In other words, Ms Tauira's delay in accepting responsibility is at least partly accounted for because she did not accept that she was guilty of theft or that she had received the benefit of any of the money received into her account, and disputed the amount of money she had received. And ultimately the Crown was prepared to proceed on that basis.

[27] For these reasons we consider the Judge erred in his assessment of the gravity of the offending. It was serious offending by the person who arranged to scam the victim of the money via the remote access application on the victim's computer but Ms Tauira was not involved in that or in receiving the benefit of any of the stolen money. She was a first offender, at a mature age, who ultimately accepted responsibility when the charge and summary of facts were amended to reflect her role.

[28] We also consider the Judge somewhat understated the consequences of a conviction. In the first place, when the gravity of offending is low, the consequences of a conviction may be out of all proportion to that gravity even if they are generic rather than specific. As this Court said in *J (CA32/2021) v R*, while the courts have tended to more readily accept the existence of general consequences where young people are involved, the principle is not constrained in this way and every case must be considered on its own facts and circumstances.<sup>22</sup>

---

<sup>21</sup> The Crown described the amended statement of facts as the "corrected agreed summary of facts" in a memorandum to the Court dated 26 February 2025.

<sup>22</sup> *J (CA32/2021) v R* [2021] NZCA 690 at [49]; and see also *Murray v R* [2023] NZCA 126 at [18].

[29] A somewhat comparable case is the decision of Katz J in *Taavili v Police*, cited with approval by this Court in *J (CA32/2021) v R*.<sup>23</sup> In that case the negative consequences of conviction on a low-level assault for a 37-year-old solo mother of three with no previous convictions was considered to be out all proportion to the offending. The mother was in employment and was looking to advance to a more senior position. The Judge accepted the existence of a conviction would likely hinder her career progression or her ability to secure roles in the future.

[30] Here Ms Tauira does not have current employment and her thoughts of becoming a bus driver are aspirational at this point. However, aspirational employment prospects should not be entirely discounted. We are told that Ms Tauira does wish to obtain employment when her son is five years old and goes to school, and that she will be expected by Work and Income | Te Hiranga Tangata to actively look for work. The challenges Ms Tauira faces in finding employment are likely to be somewhat steep, given her limited work skills and employment history. We also accept that Ms Tauira's confidence in seeking work is likely to be low given those challenges and, if she is required to disclose that she has a conviction, that confidence is likely to be lower still.

[31] On top of these disadvantages in securing employment, we consider that she is likely to face challenges in seeking what will likely be low-skilled work with a dishonesty conviction and that an employer is unlikely to be particularly interested in reading the sentencing notes or this judgment to make an assessment of the nature and gravity of the offending. As Ms Tauira will be expected to seek work before the Criminal Records (Clean Slate) Act 2004 will allow her to withhold the fact of her conviction, this legislation will not be of any assistance to her as she seeks to embark on a return to employment.

[32] In all these circumstances, we conclude that the consequences of a conviction are out of all proportion to the gravity of Ms Tauira's offending. We are therefore satisfied that the appeal must be allowed.

---

<sup>23</sup> *Taavili v Police* [2012] NZHC 2323; and *J (CA32/2021) v R*, above n 22, at [45].

## **Result**

[33] The appeal is allowed.

[34] The conviction and sentence are set aside.

[35] We make an order discharging the appellant without conviction under s 106 of the Sentencing Act 2002.

## **VENNING J**

[36] I would have dismissed the appeal. I consider the District Court Judge correctly assessed the offending as at the low to bottom end of receiving offences before taking account of the appellant's personal factors, which I accept would have reduced the gravity of the offending further. However, I consider the suggestion that a conviction will affect the appellant's ability to obtain employment as a bus or truck driver in the future (when she does not have a licence for either occupation) or will otherwise affect her "future career opportunities" to be speculative, and to be no more than the ordinary consequences of a conviction. For those reasons I consider the Judge was correct to conclude the appellant failed to meet the statutory test that a conviction would be out of all proportion to the gravity of the offending.

Solicitors:

Te Tari Ture o te Karauna | Crown Law Office, Wellington for Respondent